CREDIT CORPORATION MALAYSIA BHD *a*

v.

SARASWATHI NARAYANAN & ORS

HIGH COURT MALAYA, PULAU PINANG *b*
ABDUL HAMID MOHAMAD J
[CIVIL SUIT NO: 22-181-98]
8 OCTOBER 1999

CIVIL PROCEDURE: *Injunction - Ex parte injunction order - Lifespan of two weeks - Rules of the High Court 1980, O. 29 r. 1(2B) - Failure of defendants to comply with order within 7 days of service as required - Whether 7-day compliance exceeded lifespan of order - Whether in view thereof defendants did not breach order* *c*

The plaintiff obtained an *ex parte* injunction order on 9 April 1998 against the defendants. By virtue of para. 3 of the said order the defendants were required to comply with the said order within 7 days of service. *d*

The said order was served on the 3rd defendant on 16 April 1998, on the 1st and 4th defendants on 17 April 1998 and on the 2nd defendant on 18 April 1998. The plaintiff subsequently obtained an *inter parte* injunction order which did not contain a para similar to para. 3 in the *ex parte* order. This was the plaintiff's contempt proceedings against the defendants on the basis that the defendants failed to comply with the *ex parte* order. *e*

Held: *f*

[1] By virtue of O. 29 r. 1(2B) Rules of the High Court 1980 ('RHC') the two week life span of the *ex parte* order expired on 23 April 1998. The *inter parte* order obtained on 21 April 1998 did not affect the lifespan of the *ex parte* order. Neither did it extend the *ex parte* order as the *inter parte* order was a new order altogether. *g*

[2] Taking into account the dates of service of the order and O. 3 r. 2(5) of the Rules of the High Court 1980, the 7-day period for the defendants to comply with the *ex parte* order expired on 25 April 1998 in respect of the 3rd defendant, on 26 April 1998 in respect of the 1st and 4th defendants and on 27 April 1998 in respect of the 2nd defendant. By that time, the lifespan of the *ex parte* order had already expired on 23 April 1998. Thus, the defendants could not be said to have contravened the order because the order itself allowed them a few more days. *h*

[Application dismissed.] *i*

Case(s) referred to:
Elias Mooin & Anor v. Dato' Zainal Abidin Johari [1997] 3 CLJ 455 ***(refd)***
Morgan Guaranty Trust Company of New York v. Lian Seng Properties Sdn Bhd [1989] 1 CLJ 452 ***(refd)***
Re Display Multiples, Ltd [1967] 1 All ER 685 ***(refd)***

Legislation referred to:
Interpretation Acts 1948 & 1967, s. 54
Rules of the High Court 1980, O. 3 r. 2(5), O. 29 r. 1(2B)

For the plaintiff - Selva; M/s Nashili & Co
For the 1st and 2nd defendants - Darshan Singh; M/s Darshan Singh & Co
For the 3rd and 4th defendants - Amareson; M/s Amareson & Meera

Reported by S Selvarajah

JUDGMENT

Abdul Hamid Mohamad J:

On 9 April 1998, the plaintiff obtained an *ex parte* injunction order, *inter alia*:

> 3. That within 7 days after the hour of service of this order upon them, the Defendants shall swear, and serve upon the Plaintiff's solicitors an affidavit disclosing the nature, location and value of all their assets within and outside the jurisdiction, including (without prejudice to the generality of the foregoing) –
>
> (a) the identity of all bank(s), finance companies or other accounts whether in their own name or jointly held or by nominees or otherwise howsoever on their behalf and the sums standing in such accounts whether such banks finance companies or other accounts may be situated, and
>
> (b) any land and/or immovable property wherever situate in which they may have an interest, whether individually or jointly with third persons;
>
> (c) any other assets owned by them or to which they are beneficially entitled including moneys, assets and any other receivable due to them from third parties.

Note that the seven-day period runs from the date of service of the order on them. I purposely made the order that way because as the order, being an *ex parte* order, by virtue of O. 29 r. 1(2B) of the Rules of the High Court 1980 (RHC 1980) would lapse at the end of two weeks from the date on which the order was granted. If, for some reasons, the order is only served a few days before the expiry of the two weeks, it would not be reasonable to require

the defendants to comply within just a few days, considering that they are required to do something positive and not just to abstain from doing something.

The order was served on the third defendant on 16 April 1998, on the first and fourth defendants on 17 April 1998 and on the second defendant on 18 April 1998.

On 21 April 1998 the plaintiff obtained an *inter parte* injunction order which does not contain an order similar to para. 3 of the *ex parte* order reproduced earlier.

The two week lifespan of the *ex parte* order expired on 23rd April 1999.

The defendants did not file the said affidavit within seven days from the respective dates of service on them. In fact they filed their respective affidavits in July 1998 about three months from the dates the order was served on them. The plaintiff commenced contempt proceedings against the defendants. Leave having been obtained, the matter came up for full hearing of the contempt proceedings.

I dismissed the application on the ground that before the expiry of the seven-day period for them to comply with the order, the *ex parte* order itself had expired, thus there was no order subsisting requiring them to do what they were supposedly ordered to do.

I must make it clear that, in my view, the fact that an *inter parte* order was obtained on 21 April 1998 did not in any way affect the lifespan of the *ex parte* order. In other words, in my opinion, the *inter parte* order did not supercede the *ex parte* order. It is a different order arising out of a separate application. In other words, the *ex parte* order remained valid for a period of two weeks even though two days prior to the expiry of the two weeks an *inter parte* order was obtained.

The *inter parte* order also did not extend the *ex parte* order, as the *inter parte* order was a new order altogether. Neither could an *ex parte* injunction order be extended beyond the period of two weeks days. I agree with James Foong J on this point: see *Elias Mooin & Anor v. Dato' Zainal Abidin Johari* [1997] 3 CLJ 455; [1997] 5 MLJ 359). Anyway, in this case, the *ex parte* order was never extended and the *inter parte* order did not contain an order similar to para. 3 of the *ex parte* order.

So, for all intents and purposes the *ex parte* order was only valid until 23 April 1998.

We now come back to the seven-day period from the respective dates of service of the *ex parte* order on the defendants for them to comply with the order. This depends on the answer to the question, even though it sounds illogical, how many days are there in "seven days"?

Order 3 r. 2(5) of the RHC 1980 provides:

> (5) Where, apart from this paragraph, the period in question being a period of 7 days or less, would include the day before the weekly holiday, the weekly holiday or public holiday, that day shall be excluded.

This provision was adopted with modifications from the English O. 3 r. 2(5) which reads as follows:

> (5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or bank holiday, Christmas Day or Good Friday, that day shall be excluded.

It is to be noted the words "the day before the weekly holiday" have been substituted for the word "Saturday". This is understandable because in Malaysia some states have Sundays and some have Fridays as their weekly holidays. So, the term "the day before the weekly holiday" means either a Saturday or a Thursday depending on the day the public holiday falls in that particular state.

The Court of Appeal in England in *Re Display Multiples, Ltd* [1967] 1 All ER 685 has decided, pursuant to the English O. 3 r. 2(5) that Saturday and Sunday are to be excluded in computing the period of seven days. In *Morgan Guaranty Trust Company of New York v. Lian Seng Properties Sdn Bhd* [1989] 1 CLJ 452; [1989] 3 MLJ 172 VC George J (as he then was) has given the same interpretation to our rule. I have no doubt that both decisions, based on similar wordings, are correct. The drafters of the Malaysian Rules have adopted the wording of the English Rules. The words are clear and should be given effect to. Of course one wonders whether when that rule was drafted it was considered that unlike Malaysia, England has a five-day week. Whatever it may be, it is clear that the rule provides that in computing a period of seven days and that period includes a Thursday and a Friday or a Saturday and a Sunday, depending in which state the order is made, two days will be added. So, in law, 7 = 9 but 8 = 8.

However, it must be remembered that the computation provided O. 3 r. 2 of the RHC 1980 only applies to matters that fall within the purview of the RHC 1980. Those outside it are governed by the provisions of s. 54 of the Interpretation Act 1967.

Coming back to this case, taking into account the dates of service of the order and, the provision O. 3 r. 2(5), the seven day period for the defendants to comply with the order expired on 25 April 1998 in respect of the third defendant on 26 April 1998 in respect of the first and fourth defendants and on 27 April 1998 in respect of the second defendant. But, by that time the lifespan of the *ex parte* order had already expired, on 23 April 1998. In other words the *ex parte* order had expired while the defendants still had a few days to comply. In the circumstances they cannot be said to have contravened the order by not filing the affidavit on or before 23 April 1998 because the order itself allowed them a few more days.

I am also of the view that the *ex parte* order cannot be said to remain valid until the expiry of the "seven days" from the date of service on the defendants. Because that will render that the provisions of O. 29 r. 1(2B) of the RHC 1980 that an *ex parte* injunction order "shall automatically lapse at the end of two weeks from the date on which it is granted" meaningless.

In the circumstances, I am of the view that the defendants have not committed a breach of the order. I dismissed the application.